

## **Remarks**

### **I. Status of claims**

Claims 1-20 were pending.  
Dependent claims 21-24 have been added.

### **II. Objections to the specification**

The Abstract has been amended to address the Examiner's concerns regarding its length.

### **III. Claim rejections under 35 U.S.C. § 101**

The Examiner has rejected claims 1-9 under 35 U.S.C. § 101.

The preamble of independent claim 1 has been amended so that the subject matter of the claim is directed to a computer-implemented method of allocating freight haulage jobs. Independent claim 1 therefore is limited to a practical application within the technological arts because the claimed invention as a whole produces a practical application by producing a concrete, tangible, and useful result. For this reason, independent claim 1 is directed to statutory subject matter under 35 U.S.C. § 101.

Claims 2-9 depend from independent claim 1 and therefore also are drawn to statutory subject matter.

### **IV. Claim rejections under 35 U.S.C. § 102**

The Examiner has rejected claims 1-6, 8-14, 16, and 17 under 35 U.S.C. § 102(e) over Gaspard (U.S. 2002/0055818).

#### **A. Independent claim 1**

Independent claim 1 has been amended and now recites the step of "receiving from one or more users respective capacity attributes, including position information, route

information and excess capacity information specifying available freight-hauling capacity, for each mobile carrier entity in a set of freight-hauling mobile carrier entities.”

In accordance with Gaspard's teachings, the host 140 does not receive excess capacity information from a user. Instead, the host 140 infers whether freight space is available to fulfill a freight transportation request based on a search of a route database 145a that contains information about existing routes that have been created by the host 140 (see ¶ 58). The host 140 infers the available freight haulage space from the cubic space reserved in the scheduled ones of the transportation requests (see last sentence of ¶ 60: “It is to be understood that the freight transportation requests include reservations for cubic space (whether or not the space is actually used) in the creation of a route”). Nowhere does Gaspard teach that the host 140 receives from one or more users excess capacity information specifying available freight-hauling capacity for freight-hauling mobile carrier entities, as now recited in independent claim 1.

It is noted that, in accordance with Gaspard's teachings, neither the passenger terminals  $P_i$  nor the freight terminals  $F_i$  are used to enter excess capacity information specifying available freight-hauling capacity. Instead, the passenger terminals are used to submit transportation “requests by a potential passenger or a group of passengers to be picked up at one location and taken to a destination” (¶ 39, lines 4-7). The freight terminals are used to submit transportation “requests by freight shippers to pick up and deliver freight from one location to another” (¶ 39, lines 16-18). None of the transportation requests that are submitted by passengers and freight shippers contains excess capacity information for a mobile carrier entity. Indeed, passengers and freight shippers do not have access to such information.

For at least these reasons, the Examiner's rejection of independent claim 1 under 35 U.S.C. § 102(e) over Gaspard now should be withdrawn.

In his rejection of independent claim 1, the Examiner has stated that “Gaspard's invention fulfills freight transport requests for a set of mobile entities – see paragraph 42 line 4.” Since Gaspard does not even hint that one of the passenger and freight transport vehicles transmits transportation requests to the host 140, Applicant has taken this statement to refer to the process by which the host 140 creates a route that satisfies a transportation request based on a database containing available vehicles and destinations. If this interpretation does not

comport with the Examiner's intended meaning, Applicant asks the Examiner to clarify his position in this regard.

B. Claims 2-6, 8, and 9

Each of claims 2-6, 8, and 9 incorporates the features of independent claim 1 and therefore is patentable over Gaspard for at least the same reasons explained above.

Claim 8 recites "further comprising computing an amount of capacity available on a given mobile carrier entity based upon excess capacity information received from the given mobile carrier entity."

In support of his rejection of claim 8, the Examiner has indicated that in paragraph 60 lines 1-2 Gaspard teaches transportation freight requirements are evaluated (i.e., computed) against available capacity (volume and weight) to determine if the load can be carried by the mobile carrier in question. In paragraph 60, Gaspard merely teaches that each new transportation request is evaluated as to available passenger seats, available freight requirements, and profitability. This teaching does not constitute "computing an amount of capacity available on a given mobile carrier entity based upon excess capacity information received from the given mobile carrier entity," as recited in claim 8. Indeed, the disclosure in paragraph 60 does not specify how the "available freight requirements" are determined. In addition, as explained above, Gaspard does not even hint that the host 140 receives excess capacity information specifying available freight-hauling capacity from a given mobile carrier entity.

Claim 9 recites that "the excess capacity information received from the given mobile carrier entity includes maximum volume information and maximum weight haulable by the given mobile carrier entity and volume information and weight for each item of freight being hauled by the given mobile carrier entity."

In support of his rejection of claim 9, the Examiner has indicated that in paragraph 60 lines 2-4 Gaspard teaches freight requirements of volume and weight for a freight transport request (i.e., excess capacity information) are received from the database to determine if a freight transport request can be fulfilled for a given mobile carrier entity." The freight requirements for a freight transportation request, however, does not constitute excess capacity information for a given mobile carrier entity. Indeed, the freight requirements specified in a

freight transportation request merely describe the volume and weight of a particular shipment. This information does not reveal anything about the capacity of a given mobile carrier nor anything about the items being carried by the given mobile carrier because the request has not been scheduled yet (see, e.g., FIG. 5).

Furthermore, in paragraph 60, Gaspard merely teaches that each new transportation request is evaluated as to available passenger seats, available freight requirements, and profitability. This disclosure does not teach that the host 140 receives from a given mobile carrier entity the maximum volume information and maximum weight haulable by the given mobile carrier entity and volume information and weight for each item of freight being hauled by the given mobile carrier entity. Indeed, the disclosure in paragraph 60 does not specify how the "available freight requirements" are determined. In addition, as explained above, Gaspard does not even hint that the host 140 receives excess capacity information specifying available freight-hauling capacity from a given mobile carrier entity.

C. Independent claim 10

Independent claim 10 has been amended to include features essentially tracking the pertinent features of independent claim 1 discussed above. Claim 10 therefore is patentable over Gaspard for at least the same reasons explained above in connection with claim 1.

D. Claims 11-14, 16, and 17

Each of claims 11-14, 16, and 17 incorporates the features of independent claim 10 and therefore is patentable over Gaspard for at least the same reasons explained above.

V. Claim rejections under 35 U.S.C. § 103

The Examiner has rejected claims 7, 15, and 18-20 under 35 U.S.C. § 103(a) over Gaspard.

A. Claims 7 and 15

Claim 7 incorporates the features of independent claim 1 and claim 15 incorporates the features of independent claim 10. Therefore, claims 7 and 15 are patentable over Gaspard for at least the same reasons explained above in connection with independent claims 1 and 15.

B. Independent claim 18

In his rejection of independent claim 18, the Examiner appears to have taken the position that the communications system 100 that is shown in FIG. 1 of Gaspard constitutes the portable device recited in independent claim 18. In particular, the Examiner has indicated that: the memory and wireless transceiver that may be present in any one of the passenger and freight terminals Pi, Fi respectively correspond to the memory and wireless transceiver recited in claim 18; the GSP receiver 170 that may be present on the vehicle 150 corresponds to the positioner recited in claim 18; and that the host computer system 140 corresponds to the controller recited in claim 18.

In his rejection, the Examiner clearly has not considered the limiting effect of the preamble on the scope of claim 18 because no one skilled in the art would consider the communications system 100 to be a portable device. The preamble of claim 18, however, does not merely state the purpose or intended use of the invention defined in claim 18. To the contrary, the preamble clearly provides a distinct definition that limits the invention of claim 18 to a portable device. Therefore, the Examiner is not entitled to ignore the limitations of the preamble of claim 18 (see, e.g., MPEP § 2111.02).

Gaspard's communications system 100, including the elements relied on by the Examiner in support of his rejection of claim 18 (i.e., one of the terminals Pi, Fi, the vehicle 150, the host 140, and the interconnecting network), clearly is not a portable device. Therefore, the Examiner has failed to establish a proper *prima facie* case of obviousness under 35 U.S.C. § 103(a). For at least this reason, the Examiner's rejection of independent claim 18 should be withdrawn. Claim 18 also is patentable over Gaspard for the following additional reasons.

Claim 18 recites that the portable device comprises “a controller ... operable to obtain from the scanner capacity attributes, including position information, route information and excess capacity information, for a mobile carrier entity.” The Examiner has indicated that this feature of claim 18 is met by the host 140. In particular, the Examiner has stated that the host 140 “is operable to obtain position, route, and excess capacity information from a mobile carrier – see paragraph 38, line 2-6.” As explained above in connection with independent claim 1, however, the host 140 does not receive excess capacity information from a user (or a mobile carrier entity). Instead, the host 140 infers the available freight haulage space from the cubic space reserved in the scheduled ones of the transportation requests (see last sentence of ¶ 60). Therefore, contrary to the Examiner's assertion, the host 140 does not obtain excess capacity information from a mobile carrier entity.

Moreover, the Examiner has not shown that Gaspard's disclosure would have led one skilled in the art at the time of the invention to a portable device defined by claim 18 in which the controller is operable to obtain excess capacity information for a mobile carrier entity from the scanner, as recited in claim 18. In particular, the Examiner has acknowledged that Gaspard does not teach a scanner. Nevertheless the Examiner has concluded that:

The examiner takes official notice that bar code scanners which recover information from symbols based on detected reflections from the symbol are old and well known in the art of logistics as a way to quickly and accurately obtain information from a shipping package.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gaspard regarding providing a system for scheduling capacity information on mobile carriers with excess capacity, to include the step of entering information into the system using a bar code scanner, because it would simply and make more accurate the entering of logistic information into the system.

This reasoning, however, does not explain how one skilled in the art at the time the invention was made would have been led from a host 140 that obtains some sort of unspecified “information” about a shipping package from a scanner to a controller that is operable to obtain excess capacity information for a mobile carrier entity from a scanner. Therefore, the Examiner has failed to provide the requisite factual basis and failed to establish the requisite motivation to support his deemed conclusion that the features recited in claim 18 would have been obvious to one skilled in the art at the time of the invention.

In addition, the Examiner is requested to cite art in support of his proposed modifications of Gaspard's system. Alternatively, if the Examiner is aware of facts within his personal knowledge that provide the requisite factual basis and establishes the requisite motivation to support his deemed conclusion that the features recited in claim 18 would have been obvious, the Examiner is requested to provide an affidavit in accordance with 37 CFR § 1.104(d)(2). Otherwise, the Examiner's rejection of claim 18 should be withdrawn.

Finally, the Examiner impermissibly has relied on two physically and logically separate elements of Gaspard's system to meet a single element of the portable device defined in claim 18. In particular, claim 18 recites that the controller is operable (1) to obtain from the scanner capacity attributes, including position information, route information and excess capacity information, for a mobile carrier entity and (2) to control wireless transmission of the capacity attributes through the wireless transceiver in accordance with a mobile wireless communication protocol. In his rejection of claim 18, the Examiner has stated that the first functionality of the controller recited in claim 18 is met by the host 140 and that the second functionality of the controller recited in claim 18 is met by one of the terminals Pi, Fi. The host 140 and the terminals Pi, Fi clearly are physically and logically separate devices and therefore cannot possibly constitute the controller of the portable device recited in claim 18.

For at least these reasons, the Examiner's rejection of independent claim 18 under 35 U.S.C. § 103(a) should be withdrawn.

#### C. Claims 19 and 20

Each of claims 19 and 20 incorporates the features of independent claim 18 and therefore is patentable over Gaspard for at least the same reasons explained above.

#### VI. Conclusion

For the reasons explained above, all of the pending claims are now in condition for allowance and should be allowed.

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